

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO.247 OF 2005

Hari Govind Gaikwad & Ors. .. Appellants

Versus

Kundaji Lahanu Gaikwad & Ors. .. Respondents

Mr.D.K.Ghaisas with Mr.S.A.Ghaisas & A.S.Kulkarni for
appellants

Mr.Kishor Patil h/f Mr.P.N.Joshi for respondents

CORAM : P.V.KAKADE, J.

DATE : 25TH JULY 2005.

P.C.:

1. This is an appeal preferred by the appellants against the judgment and order passed by Addl. District Judge, Nasik dated 29.11.2003 dismissing the appeal and confirming the judgment and order passed by Civil Judge, Junior Division, Dindori dated 19.12.1998 dismissing the plaintiff's suit.

2. I have heard the learned counsel for both the parties. Perused the record.

3. The plaintiffs had filed the suit for declaration to the effect that they had become owner of the suit property and were in possession thereof and the sale deed dated 13.2.1991 executed by Defendant nos.4 and 5 in favour of defendant nos.1, 2 and 3 was null and void. The suit land Gat No.358, bearing old Survey No.377 located at Mauje Jalkhed, Taluka Dindori admeasuring 2 Hectare 46.9 R. Besides, the suit land, another land Gat No.359 were initially owned and possessed by defendant nos.4 and 5. The father of plaintiffs, late Govinda Kondahi Gaikwad who was cultivating it as a tenant and it was also cultivated by him for about 80/90 years. The plaintiff Nos.1, 2 and 3 are brothers of each other.

4. The suit was hotly contested by defendants on various grounds, inter alia, submitting that the allegations made by the plaintiffs are not correct and it was not correct to say that the deceased Govinda father of plaintiffs was cultivating the suit land on

1.4.1957 and as such no rights to that effect and on such and other grounds the suit was sought to be dismissed.

. The learned trial judge adjudicated the dispute on merits and on the basis of available evidence came to the conclusion that the plaintiffs failed to prove that tiller's day their deceased father Govinda was cultivating the suit land. It was further held that deceased Govinda had become owner of the suit land as alleged and further it was held that the plaintiffs failed to prove that in the year 1986 the defendants nos.1 to 3 tried to disturb their possession. On the other hand it was proved that the land of Gat No.358 i.e. the suit property was in possession of defendant nos.1 to 3 and on 16.5.1986 the defendant nos.4 and 5 had agreed to sale Gat No.358 for Rs.12,500/= and on such and other grounds the suit came to be dismissed. The appeal was carried to the District Court. The learned Addl.District Judge after hearing both the parties came to the conclusion that the findings recorded by the lower court were just, legal and proper and therefore dismissed the appeal. Hence the present appeal.

5. At the outset it may be noted that there is no substantial question of law involved in this appeal. The learned counsel for the appellant brought to my notice that the question of law involved herein was to the effect that the lower appellate court had failed to consider the possession of the appellants in the suit land on 1.4.1957 i.e. tiller's day which gave them right of ownership and under such circumstances the lower appellate court ought to have seen the case for further inquiry under Section 70(B) of the B.T. and A.L. Act, 1948. In this regard it must be noted, on the basis of entire evidence on record, that the revenue authority had no power to declare any person as owner of the land. It can only deal with issue of tenancy in tenancy proceedings, therefore, claim of the appellants that their father was declared as owner by Addl. Mamlatdar by virtue of Order placed at Exh.49 cannot be accepted. It was further submitted that on tiller's day the suit land was in possession of deceased Govinda, and therefore, he was a protected tenant and purchaser. However, this submission also cannot be accepted for the reason that he was already declared as owner in the year 1933 of the property by Addl. Mamlatdar, that is before

coming to force the provision of B.T. & A.L. Act, 1948 and therefore, again by virtue of Section 32G he cannot become deemed purchaser. The learned lower appellate court, rightly, has observed that when suit land was owned by Govinda in the year 1933 himself, he could not become tenant again on tiller's day i.e. 1.4.1957 after coming into force of B.T. & A.L. Act, 1948.

6. In view of this factual matrix I hold that there is no substantial question of law involved in this appeal and the findings of both the courts below are proper and legal, and therefore, would brook no interference.

. In the result the appeal stands dismissed with no order as to costs.